COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

Criminal Appeal No. 1338 of 2001

(Old Case No. 2053 of 1988)

Dhoorat Singh, son of Shri Bhag Singh,
Resident of village Mathlau,
Patti Dashjula Jaunpur, Tehsil Dhanolti,
P.S. Narendra Nagar,
District Tehri Garhwal

…..Appellant

Versus

State of U.P. ….Opposite Party

Sri Lokendra Dobhal, learned counsel for the appellant.
Shri Harish Puraji, learned Addl. G.A. for the State.

Approved for reporting.
~~Not approved for reporting~~

Dated: 26.10.2007

(Dharam Veer, J.)

COURT NO. 7

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 1338 of 2001

(old Case No. 2053 of 1988)

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Resident of village mathlau,
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……Appellant

Versus

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…..Opposite Party

Sri Lokendra Dobhal, learned counsel for the appellant.
Sri Harish Pujari, learned Addl. G.A. for the State.

Dated:- 26.10.2007

Hon'ble Dharam Veer, j.

This criminal appeal, preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) is directed against the judgment and order dated 19/20.08.1988 passed by Sessions Judge, Tehri Garhwal in Sessions Trial No. 14 of 1987, State v. Dhoorat Singh and others, whereby the learned Sessions Judge has convicted appellant Dhoorat Singh under Sections 324 of the Indian Penal Code, 1860 (hereinafter referred to as IPC) and awarded sentence of one year's R.I. and ordered to pay a fine of Rs. 500/- and in default of payment of fine the appellant has to undergo three months' further R.I. under Section 324 IPC and acquitted Sobat Singh and Dil Bahadur Singh.

2. In brief, the prosecution case is that complainant Heera Lal moved an application before City

Magistrate, Narendra Nagar on 21.01.1986 with the allegation that in the evening of 20.01.1986 at about 7.00 PM he was going to take meal in the hotel. As he reached at the road, he saw the two constables of Narendra Nagar Police Station were enquiring something form the accused Shiv Singh and were asking him that he was called by S.O. Meanwhile, Dhoorat Singh told them that he would produce his servant tomorrow before them. On this assurance the constables went from there. As the constables went from the place of occurrence, accused asked form Heera Lal that he had lodged a false complaint against him in Narendra Nagar Police Station, due to this reason these police personenel had come here. After that all the five accused persons started to beat Heera Lal. He cried and on hearing his cries, Patwari Bhagwan Das, Ratan Lal, Chandan Singh, Raghuveer Singh Sajwan and Shiv Raj Singh came at the place of occurrence. At that time he had fallen down on the road. He has further stated that from his hand one H.M.T. wrist watch price about Rs. 290/-, Rs. 1,500/- from his pocket and a golden ring of about Rs. 1,200/- from his finger were taken by the present appellant Dhoorat Singh. After that the accused persons ran away from the place of occurrence leaving him in an injured condition. On the place of occurrence he found one Khukhri and one iron rod (sariya) Later on he was medically examined in Fakot Hospital and he has also stated that the accused also caused injury to Chandan Singh and Chandan Singh also medically examined. That application is Ex.Ka-1. On this application the City Magistrate passed order to S.O. concerned for registering the F.I.R. and for necessary action. The F.I.R. was lodged in the Police Station on 21.01.1986 at 14.20 hours under

Section 395 IPC and on the basis of this F.I.R., the *Chik* F.I.R. was prepared in the Police Station Narendra Nagar by the Head Moharrir Bharose Lal that *Chik* F.I.R. is Ex.Ka-2. The entry was also made in the G.D., the copy of the G.D. is Ex.Ka-3 The investigation of the case was entrusted to S.I., P.S. Bhandari, Later on the investigation was transferred on 25.01.1986 to S.I. Govind Ballabh Pandy. They injury report of the injured is Ex.Ka-8. During the course of the investigation the Investigating Officer recorded the statements of the witnesses and took the blood stained clothes of Heera Lal and iron rod (sariya) in his possession and *Fard* was prepared, that *Fard* is Ex.Ka-9. He has also prepared the site plan of the place of occurrence, i.e. Ex.Ka-10. After completing the investigation he filed the charge sheet against the present appellant and other two co-accused Sobat Singh and Dil Bhadur Singh under Section 307 IPC on 16.02.186, that charge sheet is Ex.Ka-7.

3. Learned Chief Judicial Magistrate committed the case to the Court of Session on 05.05.1987 under Section 209 Cr.P.C. after complying the provisions of Section 207 Cr.P.C.

4. Learned Sessions Judge, Tehri Garhwal framed charges against appellant Dhoorat Singh and co-accused Sobat Singh and Dil Bahadur Singh under Section 307 IPC on 27.01.1988 andn the charges were read over and explained to the appellant and co-accused who pleaded not guilty and claimed to be tried.

5. To prove its case the prosecution examined P.W.1 Heera Lal (complainant and injured), P.W.2 Ratan

Lal, P.W.3 Bhgagwan Das, P.W.4 Constable Bharose Lal, P.W.5 Shiv Raj Singh, P.W.6 Raghuveer Singh, P.W.7 Chandan Singh, P.W.8 Govind Ballabh Pandey (S.O. and investigating Officer). After that the statement of the appellant and co-accused were recorded under Section 313 Cr.P.C., who denied the allegations made against them and in defence they did not produce any oral or documentary evidence.

6. After appreciating the evidence on record and hearing learned counsel for both the parties, learned Sessions Judge, Tehri Garhwal has convicted appellant Dhoorat Singh under Sections 324 IPC and awarded sentence of one year's R.I. and ordered to pay a fine of Rs. 500/- and in default of payment of fine the appellant has to undergo three months' further R.I. under Section 324 IPC and acquitted Sobat Singh and Dil Bahadur Singh.

7. Against the said judgment and order, the appellant has preferred the instant appeal.

8. I have heard Sri Lokendra Dobhal, learned counsel for the appellant as well as Sri Hrish Puraji, learned Additional Government Advocate for the State and perused the entire record of the trial court.

9. To prove its case the prosecution has examined P.W. 1 Heera Lal, who has stated that on 20.01.1986 at about 7-8 PM he was in the Nichli Khari and Patwari was also living there. He was going to take meal in the hotel. The meal was not ready in the hotel then he was coming back to chawki. Meanwhile,

accused-appellant Dhoorat Singh called him and told him that you had made false complaint against him in the police station and he had tried to beat him. Appellant Dhoorat Singh attacked on his head with Rinbgdar Sariya (iron rod) and the appellant was accompanied by three other persons. One of them was Dil Bhadur Singh, who was his servant and the other was Sobat Singh, who was his brother. Both of them had also beaten him. After that he became unconscious. After hearing his cries the other people reached at the place of occurrence and saved him. From his hand one H.M.T. wrist watch, Rs. 1,500/- from his pocket and a golden ring form his finger were taken by somebody. He has further stated that he was lying at the place of occurrence about one and half hours to two hours. He had found an iron rod (sariya) on the road. He was medically examined and he had given the report of the said incident i.e. Ex.Ka-1. he identified the iron rod i.e. Ex. 1. He has further stated that at the time of the incident Chandan Singh Chaprasi, Raghuveer Singh Sajwan, Shiv Raj Singh, Bhagwan Das Patwari and Ratan Lal were also there. In the cross-examination he has stated that appellant Dhoorat Singh had also a hotel in the Khari. He has further stated that the place of incident was before the hotel of Bachan Singh. He has also stated that at the place of occurrence he found a Khukhri that was given to the police.

10. P.W.2 is Ratan Lal, who has not supported the prosecution case and declared hostile.

11. P.W.3 is Bhagwan Das, who has also not supported the prosecution case and declared hostile.

12. P.W.4 is Head Constable Bharose Lal, who has stated in his statement that on 21.01.1986 he was posted as head Moharrir in the Police Stattion Narendra Nagar. On the basis of the report i.e. Ex.Ka-1 he prepared a *Chik* report, i.e. Ex.Ka-2 and the entry was made in the G.D., the copy of the G.D. is Ex.Ka-3 in cross-examination, he has stated that along with the report Ex.Ka-1, no injury report was filed.

13. P.W. 5 is Shiv Raj Singh, who has also not supported the prosecution case and declared hostile.

14. P.W. 6 is Raghuveer Singh, who has state that the incident had taken place about two years before. The time was 7-7.30 PM. He had gone to the shop of Shiv Singh Chauhan. From there he heard the noise. When he reached at the place of occurrence, so many people were gathered there. He had not seen any *marpeet* there but the people told him that some quarrel had taken place between Patwari and Dhoorat songh. He did not see Dhoorat Singh there and Patwari was injured. In the cross-examination he has stated that he could not give the name of persons who told him about the incident. He has further submitted that Heera Lal was conscious at that time and he did not ask from Heera Lal.

15. P.W.7 is Chandan Singh, who has stated that on 20.01.1986 at about 7-7.30 PM he was in his room. He had reached at the place of occurrence then he saw that the appellant Dhoorat Singh was armed with the iron rod and Bahadur Gorkha was armed with *Danda* and Surat Singh was armed with *Danda* and all the three

Persons were beating Patwari. So many people were there. After that the accused ran away. On the place of incident Shiv Ram photographer, Ratan Lal, Raghuveer Singh and other people were also there and Heera Lal received the injuries in the said incident. In the cross-examination in para-2 he has stated that he was not medically examined by the Medical Officer. In para-3, he has state that घटनास्थल से मेरा कमरा 1/2 कि0मी0 है। घटनास्थल नीचे नदी की तरफ है और मेरा कमरा ऊपर पहाड़ी पर है । **मेरे कमरे से घटनास्थल दिखाई पड़ता है। मैं अपने कमरे में अकेला था। मेरे घटनास्थल पर पहुॅचने के पहले बहुत से लोग वहां इकटठे थे और तब तक पटवारी के चोट लग चुकी थी। मेरे सामने पटवारी गिरा हुआ था मारा नहीं था। उसके सिर से खून निकल रहा था।** He has stated that his room is about half kilometer from the place of occurrence. The place of occurrence was towards river and his room was on the hills and he could see the place of occurrence from his room. He was alone in his room. Before his reaching at the place of occurrence, so many people were there and the Patwari had received injuries. Before him the Patwari was lying in the road and he was not beaten before him. The blood was oozing from his head. In para-4 he has further stated that इस मुकदमे के गवाहन में मै। सबसे बाद में पहुॅचा। जब मैं तो पटवारी बेहोश नहीं था। मैंने नहीं देखा कि किस मुलजिम ने कितने डण्डे व किसने कितनी सरिया मारी । मैंने यह भी ध्यान नहीं दिया कि मुझे किस मुलजिम ने डण्डा मारा। He reached at the place of occurrence after all the witnesses. When he reached at the place of occurrence the Patwari was not unconscious. He did not see as to who of the accused persons had caused the injury with *Danda* and as to who of the accused persons had caused injury with iron road (Sariya). In para-5, he has stated that घटनासथल के पास बाजार है और बहुत सी दुकानें हैं। मुझे याद नहीं कि यह घटना किसकी दुकान के सामने हुई। फिर काह कि अतर सिंह की दुकान के सामने मारपीट हुई। Market is near the place of occurrence and there are so many shops. He

Could not remember that before which shop the incident had happened. After that he has stated that the incident had happened before the shop of Atar Singh. In para-6 he has stated that at the time of incident there was night and the shops were closed. In para-7 he has stated that he had gone to the hospital along with the Patwari but he had neither told about his injury to the Doctor nor to the police.

16. P.W. 8 Govind Ballabh Pandey, who is the Investigating Officer of the case. He has stated that in the year 1986 he was posted as Station Officer at Police Station Narendra Nagar. Investigation of the case was started by Sub Inspector P.S. Bhandari and the investigation was transferred to him on 25.01.1986. During the course of the investigation he recorded the statements of the witnesses. During the course of the investigation he came to the conclusion that the case did not fall under Section 395 IPC hence he converted the case under Section 307 IPC on 26.01.1986. After completing the investigation he submitted the charge sheet, i.e. Ex.Ka-7 on 16.02.1986.

17. After that the statement of appellant and other co-accused were recorded under Section 313 Cr.P.C., who denied the allegation made against them and the appellant has stated in reply to question no. 8 that the complainant used to take meal in his hotel for last two to three months before the incident and he had not paid the money of meal to the present appellant. When he asked the money, the complainant Patwari had said that how he dared to ask money from Patwari and also warned him that he would implicate him in the false case.

18. Sri Lokendra Dobhal, learned counsel for the appellant has submitted that in the instant case the solitary evidence of Heera Lal is against the appellant and rest of the eye witnesses shown in the F.I.R. or in the investigation have not supported the prosecution case. He has submitted that the eye witness P.W.2 Ratan Lal, P.W.3 Bhagwan Das, P.W 5 Shiv Raj Singh have not supported the prosecution case and have been declared hostile. As far as P.W. 6 Raghveer Singh is concerned, he has also not supported the prosecution case. Only on the hearsay, he has simply said that people of the locality had told him that some quarrel took place between Dhoorat Singh and Patwari Heera Lal but he could not give the name of the persons who had told him about the said quarrel, hence he is not the eye witness. On the basis of this, learned counsel for the appellant has submitted that Raghuveer Singh ahs also not supported the prosecution case. Another witness is P.W.7 Chandan Singh. For that learned counsel for the appellant has submitted that Chandan Singh has also stated in his cross-examination that he had not seen the incident. The incident had happened and the Patwari had received the injury before he reached at the place of occurrence. मेरे घटनास्थल पर पहुचने के पहले बहुत से लोग वहॉ इकटठे थे तब तक पटवारी के चोट लग चुकी थी। मेरे सामने पटवारी गिरा हुआ था मारा नहीं था। उसके सिर से खून निकल रहा था। Learned counsel for the appellant has further submitted that he has stated in the examination in chief that the injury was caused to Heera Lal by appellant Dhoorat Singh with iron rod and the co-accused Dil Bhadur Singh and Sobat Singh with Danda. However, the complainant Heera Lal has stated in his examination- in-chief that the injures were caused with Dhardar

Sariya (iron rod) by the present appellant Dhoorat Singh and the co-accused Sobat Sigh and Dil Bahadur Singh had also beaten him. Accordingly, learned counsel for the appellant has submitted that there is contradiction in the statements of Heera Lal and Chandan Singh and Chandan Singh has not supported the statement of complainant heera Lal and the statement of Chandan Singh is also not reliable in the same manner.

19. From the evidence discussed above, the statement of Chandan Singh is also not reliable and believable. Accordingly, P.W.2 Ratan Lal, P.W.3 Bhagwan Das, P.W. 5 Shiv Raj Singh, P.W. 6 Raghuveer Singh and P.W. 7 Chandan Singh have not supported the prosecution case and there is solitary evidence of P.W.1 Heera Lal against the appellant.

20. learned counsel for the appellant ahs further submitted that the solitary evidence of Heera Lal does not inspire confidence. He has further submitted that evidence of Heera lal has not been supported by the other witnesses, hence on the basis of this sole evidence it would be unsafe to convict the accused-appellant. He has submitted that in the F.I.R. the enmity was shown against Shiv Singh and it was also written in the F.I.R. that the appellant had taken one H.M.T. wrist watch of about Rs. 290/- from his hand, Rs. 1,500/- from his pocket and golden ring of about Rs. 1,200/- from his finger but in the investigation the Investigating Officer found this fact wrong. Learned counsel for the appellant has further submitted that on the basis of the wrong averments made in the F.I.R. the case was registered under Section 395 IPC but during the course of the

Investigation the Investigating Officer found that the offence under Section 395 IPC was not made out against the appellant and other co-accused and the charge sheet was submitted under Section 307 IPC. On the basis of this, learned counsel for the appellant has submitted that statement of Heera lal is self contradictory and is against the contents of the F.I.R. He has further submitted that in the F.I.R. He has further submitted that in the F.I.R., complainant Heera lal has shown enmity with some other accused Shiv Singh but in the statement he has shown the enmity with the present appellant. In the F.IR. he has also stated that five persons had betan him though he had not given the names of five persons but in the statement he has stated that only three persons had beaten him and out of the three persons one was the appellant who was armed with iron rod and other two co-accused had also beaten him but another witnesses Chandan Singh stated that the other two co-accused, namely, Sobat Singh and Dil Badadur Singh were armed with Danda. On the basis of these two contradictory statements, learned counsel for the appellant has submitted that there is only one lacerated wound on the head of injured Heera Lal and now it cannot be said that as to who of the accused persons has caused this lacerated wound on the head of the complainant. Thus, the prosecution story is doubtful and on the basis of the evidence discussed above the prosecution has failed to establish the case against the present appellant beyond reasonable doubt.

21. Learned counsel for the appellant has submitted that conviction cannot be based on the solitary evidence which does no inspire confidence. In support of his argument, he has cited a judgment rendered by the

Hon'ble Supreme Court in the case of **Joseph** v. **State of Kerala** reported in (2003) 1 SCC 465 and relied on para 13 which is quoted below:-

> *"13. To our mind, it appears that the High Court Did not follow the aforesaid standard but went on to analyse evidence as if the material before them was given for the first time and not in appeal. Section 134 of the India Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a court to record and sustain a conviction on the evidence of a solitary eyewitness. Btu, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and it tune with probabilities and inspires implict confidence. By this standard, when the prosecution case rests mainly on the sole testimony of an eyewitness, it should be wholly reliable. Even though such witness is an injured witness and his presence my not be seriously doubted, when this evidence is in conflict with other evidence, the view taken by the trial court that it would be unsafe to convict the accused on his sole testimony cannot be stated to be unreasonable."*

22. On the basis of above said judgment (supra), learned counsel for the appellant has submitted that th evidence of the solitary witness should be accepted with caution. He has further submitted that it is permissible to record and sustain a conviction on the evidence of a solitary eyewitness. But, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence.

23. Learned counsel for the appellant has further submitted that on the same set of evidence two co- accused viz. Dil Bhadur Singh and Sobat Singh have

Been acquitted by the trial court and on the same set of evidence the present appellant cannot be convicted. He has cited a judgment rendered by Hon'ble Supreme Court in the case of **Deepak Rajak** v. **State of West Bengal** reported in 2007 AIR SCW 5740 and he has relied on para nos. 2, 3, 5 & 6 which are as follows:-

> *"2. The factual details need not detain us as undisputedly the co-accused have been acquitted by this Court in Mousam Singha Roy and Others v. State of W.B. [2003 (12) SCC 377]. The effect of such acquittal vis-à-vis similarly situated co-accused has been considered by this Court in several cases.*
>
> *3. Learned counsel for the appellant placed reliance on various decisions of this Court contending that the benefit of acquittal should be extended to the appellant.*
>
> *5. The position in law as to what happens in cases of acquittal of similarly placed co-accused on the same set of facts and on similar accusations has been considered by this Court in several cases.*
>
> *6. A departure may be made in cases where the accused had not surrendered after the conviction in addition to not filing an appeal against the conviction. But as in the present case, after surrender, the benefit of acquittal in the case of co-accused on similar accusations can be extended."*

24. Learned counsel for the appellant has also cited a judgment on the same set of evident rendered by the Hon'ble Supreme Court in the case of **Joginder Singh and others** v. **State of Punjab** reported in reported in 1994 SCC (Cri) 46. He has relied on para 3 of the said judgment, which is quoted below:-

> *"3. The accused denied the offence and stated that they were falsely implicated. The prosecution case rested on the evidence of PW 3, the father of the*

Deceased and PW4 who claimed to be an eyewitness. The trial court convicted six of the accused persons, as already stated. The trial court considered their evidence and observed that the possibility of false implication of three of the convicted accused cannot be ruled out. Having stated so, the High Court acquitted three of the accused. At more than one place, the High Court pointed out that the false implication of the acquitted accused cannot be ruled out. Without further discussion, the High Court convicted the three appellants solely on the ground that they had motive to attack. It may be mentioned that the evidence of PWs 3 and 4 is to the effect that quite a few of the acquitted accused inflilcted injuries with sharp-edged weapons. But their evidence is rejected in respect of other five accused solely on the ground that they could have been falsely implicated. In our view, the same reasoning applies to the case of the present appellants also. It that be the position, the appellants cannot be treated as a different category merely on the ground that they had motive and on that basis they could not have been convicted when the evidence of the eyewitness was found to be highly unsatisfactory. The High Court has committed an error in convicting the present appellants having rejected the evidence of the eyewitnesses in respect of the other accused."

25. On the basis of the aforesaid judgments, learned counsel for the appellant has contended that on the basis of same set of evidence, co-accused Sobat Singh and Dil Bahadur Singh have been acquitted by the trial court and the present appellant Dhoorat Singh ahs been convicted. He has further submitted that in view of the judgment of Hon'ble Apex Court rendered in the case of Joginder Singh (Supra) on the basis of the same set of evidence the present appellant cannot be convicted when

The other two other accused persons have been acquitted by the trial court on the same set of evidence.

26. From the evidence discussed above, it is clear that there is a solitary evidence of complainant Heera Lal as P.W. 2 Ratan Lal, P.W. 3 Bhagwan Das and P.W. 5 Shiv Raj Singh have been declared hostile. So far as P.W. 6 Raghuveer Singh is concerned, he is also not an eye- witness and has made statement only on the hearsay and even he has not given the name of the persons, who had told him about the said incident. Accordingly, he has also not supported the prosecution case. As far as P.W> 7 Chandan Singh is concerned, he has stated in his statement that he had not seen the incident. The incident had happened and the Patwari had received the injury before he reached at the place of occurrence. Moreover, he has stated that the injury was caused to Heera lal by appellant Dhoorat Singh with iron rod and the coaccused Dil Bhadur Singh and Sobat Singh with Danda. However, the complainant Heera Lal has staed in his statement that the injuries were caused with Dhardar Sariya (iron rod) by the present appellant Dhoorat Singh and the co-accused Sobat Singh and Dil Bhadur Singh ahd also beaten him, as such, there is contradiction in the statements of Heera Lal and Chandan Singh and Chandan Singh ahs not supported the statement of complainant Heera Lal and thus, the satatement of Chandan Singh is also not reliable in the same manner.

27. Now there is solitary evidence of P.W. 1 Heera Lal which also does not inspire confidence as the evidence of Heera Lal has not been supported by the other witnesses and his statement is also self

Contradictory as in the F.I.R., complainant Heera Lal has shown enmity with another accused Shiv Singh but in the statement the has shown the enmity with the present appellant. In the F.I.R> he has also stated that five persons had beaten him though he had not given the names of five persons but in the statement he has stated that only three persons had beaten hum and out of the three persons one was the appellant who was armed with iron rod and other two co-accused had also beaten him. In addition to this, it has also been written in the F.I.R. by complainant Heera Lal that the appellant had taken one H.M.T. writst watch of about Rs. 290/- from his hand, Rs. 1,200/- from his finger but in the investigation the Investigating Officer found this fact wrong. Thus, as per the decision of Hon'ble Apex Court rendered in the case of Joseph v. State of Kerala (supra), the solitary evidence should be accepted with acution and the conviction can be made ont eh solitary evidence onbly if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implict confidence but in this case the solitary evidence of complainant Heera Lal is not cogent and reliable, as such the conviction of the appellant cannot be made on the basis of solitary evidence which does not inspire confidence.

28. From the perusal of the record, it is also clear that on the same set of evidence two accused persons, namely, Sobat Singh andn Dil Bahadur Singh have been acquitted by the trial court and the present appellant has been convicted, which is not justiceable as per the dictum made by the Hon'ble Apex Court in the case of Deepak Rajak and Joginder Singh (supra)

29. After considering all the facts and circumstances of the case as narrated above and the dictum made by the Hon'ble Apex Court in the aforesaid judgments, the judgment of the court below is not justified and cored, as per the law and the evidence available on record.

30. Accordingly, the appeal is allowed. Judgment and order dated 19/20.08.1988 passed by Sessions Judge, Tehri Garhwal in Sessions Trial No. 14 of 1987 as well as the conviction and sentence made against the appellant in the above said Section is hereby set aside.

(Dharam Veer,J.)

26.102.2007
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